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IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1973

No. 73- 338

John C. Carr, Petitioner

v.

Hosea Vann, Thomas County
Commissioner, et al

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES

Edgar A. Neely, Jr.
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Atlanta, Georgia 30303

Counsel for Petitioner

August 27, 1973

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1973

No.

John C. Carr, Petitioner

v.

Hosea Vann, Thomas County Commissioner, et al

The petitioner, John C. Carr respectfully prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in respect of this matter on May 31, 1973.

OPINION BELOW

The petitioner seeks by his Writ to have the judgment below reviewed. The judgment was entered without opinion in action no. 73-1368 and is recorded at 477 F. 2d 594 (5th Cir. 1973). The judgment below is attached as Appendix A to this Petition and the judgment of the trial court appears as Appendix B.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). The judgment of the Court of Appeals was entered per curiam on May 31, 1973 with Petition for Rehearing having been denied on June 21, 1973. This Petition was filed within ninety days of the entry of judgment.

QUESTION PRESENTED

Does 42 U.S.C. 1983 afford one whose **property rights** have been **unconstitutionally infringed** by local officials acting under color of law a cause of action for damages which cause of action may be heard by a Federal District Court pursuant to 28 U.S.C. 1343?

STATUTORY PROVISIONS INVOLVED

The statutory provisions relevant to the decision of this case are 42 U.S.C. 1983 and 28 U.S.C. 1343(3) which appear as Appendix C attached hereto.

STATEMENT OF FACTS

This lawsuit was commenced in the District Court of the United States for the Middle District of Georgia, Thomasville Division, by the filing of the Complaint by the plaintiff seeking damages and injunctive relief. The defendants named were the members of the Thomas County Board of Commissioners, the County governing body, and Thomas County, a public corporation and political subdivision of the State of Georgia.

At the present stage of the proceedings, the plaintiff's request for injunctive relief is moot and the defendant, Thomas County, has been dismissed pursuant to Court Order and is no longer involved in the proceedings.

The plaintiff alleged that the defendants acting under color of law were in the process of paving a previously dirt

road which ran through his property. The plaintiff further alleged that the paving process was being accomplished in such a grossly, willfully and wantonly negligent manner as to cause severe and permanent damage to the beauty and value of the plaintiff's property and that as a consequence he was deprived of his Constitutional rights within the meanings of 42 U.S.C. 1983.

In his Complaint, as amended, the plaintiff submitted that the Federal District Court had jurisdiction to determine the dispute under 28 U.S.C. 1343(3) as a result of the plaintiff's contention that the willful and wanton acts of the defendants in the construction of the road constituted a deprivation of his civil rights within the meaning of 42 U.S.C. 1983. The plaintiff further submitted that the District Court had jurisdiction in that the acts of the defendants amounted to an unconstitutional deprivation of property without compensation under the 5th and 14th Amendments to the United States Constitution.

Subsequent to answering, the defendants filed a Motion for Summary Judgment which raised several issues including the proposition that 42 U.S.C. 1983 does not afford one a cause of action for the deprivation of property or property rights. This issue and the others raised by the defendants were discussed with the Court during hearings on two separate occasions.

Subsequent to these hearings, the trial judge entered an order, attached hereto as Appendix B, which treated the Defendant's Motion for Summary Judgment as a Motion to Dismiss and which dismissed the plaintiff's Complaint on jurisdictional grounds. The sole basis for the trial judge's ruling was that 42 U.S.C. 1983 does not afford a cause of action in the Federal Court for deprivation of property rights.

The petitioner then appealed the dismissal of his Complaint to the Fifth Circuit. A number of issues were briefed for that Court, specifically all of the issues raised by the defendant's motion for summary judgment. Although

the trial Court's ruling was based on only one of the issues raised, the other issues were briefed on the theory, submitted by the appellees, that the Court of Appeals might determine that although the order of the Trial Court was void insofar as the grounds set out in support of it were concerned, it might be affirmed on other grounds. Nonetheless, the Fifth Circuit affirmed the judgment on May 31, 1973 per curiam, setting out no basis for its affirmance. The petitioner is forced to assume that the affirmance was based on the same reasoning as set out in the Order of the Trial Court in that the Court of Appeals provided no alternate basis for its judgment.

JURISDICTION OF TRIAL COURT

As set out by the Petitioner in the Statement of Facts, he alleged that the District Court had jurisdiction to determine this matter under 28 U.S.C. 1343(3) in that the petitioner alleged in his Complaint that the defendants acting under color of law had deprived him of his constitutional rights within the meaning of 42 U.S.C. 1983. Alternately, the petitioner alleged that the defendants, in taking his property for public use without compensation, had denied him his rights under the 5th and 14th Amendments to the United States Constitution.

REASONS FOR GRANTING THE WRIT

Does 42 U.S.C. 1983 afford one whose property rights have been unconstitutionally infringed by local officials acting under color of law a cause of action for damages which cause of action may be heard by a federal district court pursuant to 28 U.S.C. 1343?

The Trial Court dismissed the plaintiff's Complaint on jurisdictional grounds on the theory that 42 U.S.C. 1983 did not authorize redress for the unconstitutional deprivation of a property right. Although the issues potentially involved in this case were briefed for the Court of Appeals when that order was appealed, the Court of Appeals affirmed the lower Court per curiam, setting out

no basis in support of the affirmance. The petitioner must then assume that the Court of Appeals affirmed the Trial Court on the basis of the reasoning set out in the order affirmed. In affirming the dismissal of the plaintiff's Complaint, the Court of Appeals is in direct conflict with the decision of this Court in **Lynch v. Household Finance Corporation** 405 U.S. 538, 92 S.Ct. 1113, 31 L.Ed.2d 424 (1972). In **Lynch** the Court had this to say about the impact of 42 U.S.C. 1983:

> "The right to enjoy property without unlawful deprivation, no less than the right to speak or the right to travel, is in truth, a "personal" right, whether the "property" in question be a welfare check, a home, or a savings account. In fact, a fundamental interdependence exists between the personal right to liberty and the personal right to property. Neither could have meaning without the other. That rights in property are basic civil rights has long been recognized . . . . Congress recognized these rights in 1871 when it enacted the predecessors of § § 1983 and 1343 (3). We do no more than reaffirm the judgment of Congress today." 405 U.S. at 552.

The result of the Court of Appeals action in this case is that it has decided a Federal question in a way in conflict with an applicable decision of this Court. The petitioner submits that this is a case falling within the purview of the guidelines set out by Rule 19 of the rules of this Court concerning the issuing of Writs of Certiorari.

CONCLUSION

For these reasons, a Writ of Certiorari should be issued to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in regard to this matter.

Respectfully submitted,

/s/ Edgar A. Neely, Jr.
EDGAR A. NEELY, Jr.

I hereby certify that on this 27th day of August, 1973, three copies of the Petition for Writ of Certiorari were mailed, postage prepaid, to Mr. Elliott P. McCollum, Jr. and Mr. Charles F. Johnson, counsel for the respondents. I further certify that all parties required to be served have been served.

/s/ Edgar A. Neely, Jr.
EDGAR A. NEELY, Jr.
Counsel for Petitioner

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 73-1368
Summary Calendar*

JOHN C. CARR,
Plaintiff-Appellant,

versus

HOSEA VANN, Etc., ET AL.,
Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Georgia

(May 31, 1973)

Before GEWIN, COLEMAN and MORGAN,
Circuit Judges.

PER CURIAM: AFFIRMED. See Local Rule 21.[1]

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*Rule 18, 5 Cir., Isbell Enterprises, Inc. v. Citizens Casualty Company of New York, et al., 5 Cir., 1970, 431 F. 2d 409, Part I.

[1]See N.L.R.B. v. Amalgamated Clothing Workers of America, 5 Cir., 1970, 430 F. 2d 966.

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
THOMASVILLE DIVISION

JOHN C. CARR,	:	
Plaintiff	:	
v.	:	**CIVIL ACTION**
	:	
HOSEA VANN, THOMAS COUNTY COMMISSIONER, et al.,	:	**FILE NO. 994**
Defendants	:	

MEMORANDUM OPINION AND ORDER

In this action the Plaintiff seeks to recover monetary damages sustained by him as the result of alleged negligent construction of a roadway through his property by the Defendants. Recognizing that there is no diversity of citizenship, the plaintiff asserts jurisdiction under 42 U.S.C. §1983, a civil rights statute. The Defendants contend, among other things, that this Court lacks jurisdiction and have filed a motion for summary judgment.

The Defendants in this case are Thomas County, Georgia and the County Commissioners in their official capacities. Section 1983 of Title 42 of the United States Code does not confer jurisdiction of suits filed against a state or its political subdivisions. **Monroe, et al. v. Pape, et al., 365 U.S. 167 (1961).**

Furthermore, in this case the Plaintiff seeks to recover for property damages only. There is no allegation of any injury or damage of a personal nature. It has been frequently held that the civil rights statute relied upon by Plaintiff was not designed to support a cause of action the gist of which is damage or injury to property. **Hague v. CIO, 307 U.S. 496 (1939); Eisen v. Eastman, 421 F. 2d 560 (2 Cir. 1969); Collins v. State of Florida, et al., 432 F.2d 60 (5 Cir. 1970); Brown v. Wainwright, 419 F.2d 1308 (5 Cir. 1969).**

The plaintiff could have asserted his cause of action in the state courts. The civil rights statute, despite its broad language, was not intended to simply provide a second forum in which a claim for property damage might be litigated. **Bradford Audio Corporation v. Pious, 392 F. 2d 67 (2 Cir. 1968).**

Regarding the Defendant's motion for summary judgment as a motion to dismiss, the Court sustains the motion and directs that the complaint be dismissed on jurisdictional grounds.[1]

IT IS SO ORDERED this 26th day of January, 1973.

/s/ J. Robert Elliott

UNITED STATES DISTRICT JUDGE

[1] In support of the motion for summary judgment the Defendants contend that the record already developed in this case shows that the Plaintiff has by deed waived any claim against the Defendants for damages consequent upon the construction of the road. The disposition here made of this matter makes it unnecessary for the Court to rule on this contention.

42 U.S.C. 1983: Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the privation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

28 U.S.C. 1343(3): The district court shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;